

Senate Bill 187

By: Senators Fort of the 39th, Thompson of the 5th and Zamarripa of the 36th

A BILL TO BE ENTITLED
AN ACT

To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to improve enforcement of the uniform rules of the road; to regulate use of traffic law compliance monitoring devices in enforcing certain such rules; to provide that certain maximum speeding fine limitations shall not apply to speeding in a school speed zone; to change certain provisions relating to required observance of the uniform rules of the road; to change certain provisions relating to obedience to traffic-control devices and enforcement by traffic law compliance monitoring devices; to change certain provisions relating to traffic-control signal monitoring devices; to provide for applicability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended by inserting a new Code section to read as follows:

"40-1-1.1.

(a) As used in this Code section, the term:

(1) 'Owner' means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

(2) 'Recorded images' means images recorded by a traffic law compliance monitoring device:

(A) On:

(i) Two or more photographs;

(ii) Two or more microphotographs;

(iii) Two or more electronic images; or

(iv) Videotape; and

(B) Showing the view from the rear only of a motor vehicle apparently operated in disregard or disobedience of a CIRCULAR RED or RED ARROW traffic-control signal at any location or a maximum speed limit in a school zone and, on at least one such image or portion of tape, clearly revealing the number or other identifying designation of the license plate displayed on the rear of such motor vehicle.

(3) 'Traffic law compliance monitoring device' means a device with one or more motor vehicle sensors used to produce recorded images of motor vehicles being operated in disregard or disobedience of a CIRCULAR RED or RED ARROW traffic-control signal or a maximum speed limit in a school zone.

(b) Provisions of Chapter 6 of this title governing obedience to CIRCULAR RED or RED ARROW traffic-control signals may be enforced at any location as provided in this Code section, and provisions of Chapter 6 of this title governing maximum speed limits may be enforced in school zones as provided in this Code section, pursuant to the use of traffic law compliance monitoring devices in accordance with Article 3 of Chapter 14 of this title.

(c) For the purpose of enforcement pursuant to this Code section:

(1) The driver of a motor vehicle shall be liable for a civil monetary penalty in an amount fixed by ordinance of the county or municipality having jurisdiction over the offense if such vehicle is found, as evidenced by recorded images produced by a traffic law compliance monitoring device, to have been operated in disregard or disobedience of a CIRCULAR RED or RED ARROW traffic-control signal in violation of Code Section 40-6-20 or of a maximum speed limit in a school zone established by or pursuant to Article 9 of Chapter 6 of this title and such disregard or disobedience was not otherwise authorized by law;

(2) The law enforcement agency for which such device is permitted shall send by first-class mail addressed to the owner of the motor vehicle postmarked not later than ten days after the date of the alleged violation:

(A) A citation for the violation, which shall include the date and time of the violation, the location of the violation, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid;

(B) A copy of the recorded image;

(C) A copy of a certificate sworn to or affirmed by a trained law enforcement officer or a technician employed by a law enforcement agency for which such device is authorized and stating that, based upon inspection of recorded images, the owner's motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW traffic-control signal in violation of Code Section 40-6-20 or of a maximum speed limit in a school zone established by or pursuant to Article 9 of Chapter 6 of this title and that such disregard or disobedience was not otherwise authorized by law;

(D) A statement of the inference provided by paragraph (4) of this subsection and of the means specified therein by which such inference may be rebutted;

(E) Information advising the owner of the motor vehicle of the manner and time in which liability as alleged in the citation may be contested in court; and

(F) Warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall waive any right to contest liability and result in a civil monetary penalty;

provided, however, that only warning notices and not citations for violations shall be sent during the 30 day period commencing with the installation of a traffic law compliance monitoring device at such location;

(3) Proof that a motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW traffic-control signal in violation of Code Section 40-6-20 or of a maximum speed limit in a school zone established by or pursuant to Article 9 of Chapter 6 of this title shall be evidenced by recorded images produced by a traffic law compliance monitoring device authorized pursuant to Article 3 of Chapter 14 of this title. A copy of a certificate sworn to or affirmed by a trained law enforcement officer or a technician employed by a law enforcement agency for which such device is authorized and stating that, based upon inspection of recorded images, a motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW traffic-control signal in violation of Code Section 40-6-20 or of a maximum speed limit in a school zone established by or pursuant to Article 9 of Chapter 6 of this title and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(4) Liability under this Code section shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this Code section was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW traffic-control signal in violation of Code Section 40-6-20 or of a maximum speed limit in a school zone established by or pursuant to Article 9 of Chapter 6 of this title, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(A) Testifies under oath in open court that he or she was not the operator of the vehicle at the time of the alleged violation;

(B) Presents to the court prior to the return date established on the citation a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation; or

1 (C) Submits to the court prior to the return date established on the citation a sworn
2 notarized statement identifying the name of the operator of the vehicle at the time of
3 the alleged violation.

4 (d) A violation for which a civil penalty is imposed pursuant to this Code section shall not
5 be considered a moving traffic violation for the purpose of points assessment under Code
6 Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil
7 penalty pursuant to this Code section shall not be deemed a conviction and shall not be
8 made a part of the operating record of the person upon whom such liability is imposed, nor
9 shall it be used for any insurance purposes in the provision of motor vehicle insurance
10 coverage.

11 (e) If a person summoned by first-class mail fails to appear on the date of return set out in
12 the citation and has not paid the penalty for the violation or filed a police report or affidavit
13 pursuant to subparagraph (c)(4)(B) or (c)(4)(C) of this Code section, the person summoned
14 shall have waived the right to contest the violation and shall be liable for a civil monetary
15 penalty in an amount fixed by ordinance of the county or municipality having jurisdiction
16 over the offense.

17 (f) Any court having jurisdiction over violations of subsection (b) of this Code section or
18 any ordinance adopting the provisions of said subsection pursuant to Code Section
19 40-6-372 shall have jurisdiction over cases arising under this Code section and shall be
20 authorized to impose the civil monetary penalty provided by this Code section. Except as
21 otherwise provided in this subsection, the provisions of law governing jurisdiction,
22 procedure, defenses, adjudication, appeal, and payment and distribution of penalties
23 otherwise applicable to violations of Chapter 6 of this title shall apply to enforcement under
24 this Code section; provided, however, that any appeal from superior or state court shall be
25 by application in the same manner as that provided by Code Section 5-6-35.

26 (g) Recorded images made for purposes of this Code section shall not be a public record
27 for purposes of Article 4 of Chapter 18 of Title 50.

28 (h) The provisions of this Code section shall not limit law enforcement agencies to the use
29 of traffic law compliance monitoring devices in enforcing any provision of Code Section
30 40-6-20 or Article 9 of Chapter 6 of this title; and, when there is evidence obtained from
31 another source or sources which constitutes a prima-facie case of a violation of Code
32 Section 40-6-20 or Article 9 of Chapter 6 of this title, such violation may be prosecuted as
33 otherwise provided by law in lieu of, but not in addition to, enforcement under this Code
34 section."

SECTION 2.

Said title is further amended in Code Section 40-6-1, relating to required observance of rules of the road, punishment for violations generally, and maximum fines for certain offenses, by adding a new subsection (c) of said Code section to read as follows:

"(c) The fine limitations contained in subsection (b) of this Code section shall not apply to speeding violations committed in school speed zones properly marked in accordance with Article 9 of this chapter within one hour before, during, or within one hour after normal hours of school operation."

SECTION 3.

Said title is further amended by striking Code Section 40-6-20, relating to obedience to traffic-control devices required, presumptions, and enforcement by traffic-control signal monitoring devices, and inserting in lieu thereof the following:

"40-6-20.

(a) The driver of any vehicle shall obey the instructions of an official traffic-control device applicable thereto, placed in accordance with this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter. A violation of this subsection shall be a misdemeanor, except as otherwise provided by subsection (f) of ~~this Code section~~ Code Section 40-1-1.1.

(b) No provisions of this chapter which require official traffic-control devices shall be enforced against an alleged violator if at the time and place of the alleged violation an official device was not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular Code section does not state that official traffic-control devices are required, such Code section shall be effective even though no devices are erected or in place.

(c) Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(d) Any official traffic-control device placed pursuant to this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter, unless the contrary shall be established by competent evidence.

(e) The disregard or disobedience of the instructions of any official traffic-control device or signal placed in accordance with the provisions of this chapter by the driver of a vehicle shall be deemed prima-facie evidence of a violation of law, without requiring proof of who and by what authority such sign or device has been erected.

1 ~~(f)(1) As used in this subsection, the term:~~

2 ~~(A) 'Owner' means the registrant of a motor vehicle, except that such term shall not~~
3 ~~include a motor vehicle rental company when a motor vehicle registered by such~~
4 ~~company is being operated by another person under a rental agreement with such~~
5 ~~company.~~

6 ~~(B) 'Recorded images' means images recorded by a traffic-control signal monitoring~~
7 ~~device.~~

8 ~~(i) On:~~

9 ~~(I) Two or more photographs;~~

10 ~~(II) Two or more microphotographs;~~

11 ~~(III) Two or more electronic images; or~~

12 ~~(IV) Videotape; and~~

13 ~~(ii) Showing a traffic-control signal displaying a CIRCULAR RED or RED ARROW~~
14 ~~signal along with the rear of a motor vehicle apparently operated in disregard or~~
15 ~~disobedience of such signal and, on at least one image or portion of tape, clearly~~
16 ~~revealing the number or other identifying designation of the license plate displayed~~
17 ~~on the motor vehicle.~~

18 ~~(C) 'Traffic-control signal monitoring device' means a device with one or more motor~~
19 ~~vehicle sensors working in conjunction with a traffic-control signal to produce recorded~~
20 ~~images of motor vehicles being operated in disregard or disobedience of a CIRCULAR~~
21 ~~RED or RED ARROW signal.~~

22 ~~(2) Subsection (a) of this Code section may be enforced as provided in this subsection~~
23 ~~pursuant to the use of traffic-control signal monitoring devices in accordance with Article~~
24 ~~3 of Chapter 14 of this title.~~

25 ~~(3) For the purpose of enforcement pursuant to this subsection:~~

26 ~~(A) The driver of a motor vehicle shall be liable for a civil monetary penalty of not~~
27 ~~more than \$70.00 if such vehicle is found, as evidenced by recorded images produced~~
28 ~~by a traffic-control signal monitoring device, to have been operated in disregard or~~
29 ~~disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection~~
30 ~~(a) of this Code section and such disregard or disobedience was not otherwise~~
31 ~~authorized by law;~~

32 ~~(B) The law enforcement agency for which such device is permitted shall send by~~
33 ~~first-class mail addressed to the owner of the motor vehicle postmarked not later than~~
34 ~~ten days after the date of the alleged violation:~~

35 ~~(i) A citation for the violation, which shall include the date and time of the violation,~~
36 ~~the location of the intersection, the amount of the civil monetary penalty imposed, and~~
37 ~~the date by which the civil monetary penalty shall be paid;~~

1 ~~(ii) A copy of the recorded image;~~

2 ~~(iii) A copy of a certificate sworn to or affirmed by a trained law enforcement officer~~
3 ~~or a technician employed by a law enforcement agency for which such device is~~
4 ~~authorized and stating that, based upon inspection of recorded images, the owner's~~
5 ~~motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or~~
6 ~~RED ARROW signal in violation of subsection (a) of this Code section and that such~~
7 ~~disregard or disobedience was not otherwise authorized by law;~~

8 ~~(iv) A statement of the inference provided by subparagraph (D) of this paragraph and~~
9 ~~of the means specified therein by which such inference may be rebutted;~~

10 ~~(v) Information advising the owner of the motor vehicle of the manner and time in~~
11 ~~which liability as alleged in the citation may be contested in court; and~~

12 ~~(vi) Warning that failure to pay the civil monetary penalty or to contest liability in a~~
13 ~~timely manner shall waive any right to contest liability and result in a civil monetary~~
14 ~~penalty;~~

15 ~~provided, however, that only warning notices and not citations for violations shall be~~
16 ~~sent during the 30 day period commencing with the installation of a traffic-control~~
17 ~~signal monitoring device at such location;~~

18 ~~(C) Proof that a motor vehicle was operated in disregard or disobedience of a~~
19 ~~CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code~~
20 ~~section shall be evidenced by recorded images produced by a traffic-control signal~~
21 ~~monitoring device authorized pursuant to Article 3 of Chapter 14 of this title. A copy~~
22 ~~of a certificate sworn to or affirmed by a trained law enforcement officer or a technician~~
23 ~~employed by a law enforcement agency for which such device is authorized and stating~~
24 ~~that, based upon inspection of recorded images, a motor vehicle was operated in~~
25 ~~disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation~~
26 ~~of subsection (a) of this Code section and that such disregard or disobedience was not~~
27 ~~otherwise authorized by law shall be prima-facie evidence of the facts contained~~
28 ~~therein; and~~

29 ~~(D) Liability under this subsection shall be determined based upon preponderance of~~
30 ~~the evidence. Prima-facie evidence that the vehicle described in the citation issued~~
31 ~~pursuant to this subsection was operated in violation of subsection (a) of this Code~~
32 ~~section, together with proof that the defendant was at the time of such violation the~~
33 ~~registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that~~
34 ~~such owner of the vehicle was the driver of the vehicle at the time of the alleged~~
35 ~~violation. Such an inference may be rebutted if the owner of the vehicle:~~

36 ~~(i) Testifies under oath in open court that he or she was not the operator of the vehicle~~
37 ~~at the time of the alleged violation;~~

1 (ii) ~~Presents to the court prior to the return date established on the citation a certified~~
2 ~~copy of a police report showing that the vehicle had been reported to the police as~~
3 ~~stolen prior to the time of the alleged violation; or~~

4 (iii) ~~Submits to the court prior to the return date established on the citation a sworn~~
5 ~~notarized statement identifying the name of the operator of the vehicle at the time of~~
6 ~~the alleged violation.~~

7 (4) ~~A violation for which a civil penalty is imposed pursuant to this subsection shall not~~
8 ~~be considered a moving traffic violation, for the purpose of points assessment under Code~~
9 ~~Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil~~
10 ~~penalty pursuant to this subsection shall not be deemed a conviction and shall not be~~
11 ~~made a part of the operating record of the person upon whom such liability is imposed;~~
12 ~~nor shall it be used for any insurance purposes in the provision of motor vehicle insurance~~
13 ~~coverage.~~

14 (5) ~~If a person summoned by first-class mail fails to appear on the date of return set out~~
15 ~~in the citation and has not paid the penalty for the violation or filed a police report or~~
16 ~~affidavit pursuant to division (3)(D)(ii) or (3)(D)(iii) of this subsection, the person~~
17 ~~summoned shall have waived the right to contest the violation and shall be liable for a~~
18 ~~civil monetary penalty of not more than \$70.00.~~

19 (6) ~~Any court having jurisdiction over violations of subsection (a) of this Code section~~
20 ~~or any ordinance adopting the provisions of said subsection pursuant to Code Section~~
21 ~~40-6-372 shall have jurisdiction over cases arising under this subsection and shall be~~
22 ~~authorized to impose the civil monetary penalty provided by this subsection. Except as~~
23 ~~otherwise provided in this subsection, the provisions of law governing jurisdiction,~~
24 ~~procedure, defenses, adjudication, appeal, and payment and distribution of penalties~~
25 ~~otherwise applicable to violations of subsection (a) of this Code section shall apply to~~
26 ~~enforcement under this subsection; provided, however, that any appeal from superior or~~
27 ~~state court shall be by application in the same manner as that provided by Code Section~~
28 ~~5-6-35.~~

29 (7) ~~Recorded images made for purposes of this subsection shall not be a public record~~
30 ~~for purposes of Article 4 of Chapter 18 of Title 50.~~

31 (8) ~~The provisions of this subsection shall not limit law enforcement agencies to the use~~
32 ~~of traffic-control signal monitoring devices in enforcing subsection (a) of this Code~~
33 ~~section; and, when there is evidence obtained from another source or sources which~~
34 ~~constitutes a prima-facie case of a violation of subsection (a) of this Code section, such~~
35 ~~violation may be prosecuted as otherwise provided by law in lieu of, but not in addition~~
36 ~~to, enforcement under this subsection."~~

SECTION 4.

Said title is further amended by striking Article 3 of Chapter 14, relating to traffic-control signal monitoring devices, and inserting in lieu thereof the following:

"ARTICLE 3

40-14-20.

As used in this article, the term:

(1) 'Recorded images' has the meaning provided in ~~subparagraph (f)(1)(B) of Code Section 40-6-20~~ Code Section 40-1-1.1.

(2) '~~Traffic-control signal~~ Traffic law compliance monitoring device' has the meaning provided in ~~subparagraph (f)(1)(C) of Code Section 40-6-20~~ Code Section 40-1-1.1.

40-14-21.

(a) The law enforcement agency of any county or municipality shall not use ~~traffic-control signal~~ traffic law compliance monitoring devices unless the chief law enforcement officer of such county or municipality desires the use of such devices and such use is approved by the governing authority of the county or municipality. The governing authority of the county or municipality shall conduct a public hearing on the proposed use of such devices prior to entering any contract on or after July 1, 2001, for the use or purchase of such devices.

(b) No county or municipal governing authority shall be authorized to use ~~traffic-control signal~~ traffic law compliance monitoring devices where any arresting officer or official of the court having jurisdiction of traffic cases is paid on a fee system. This subsection shall not apply to any official receiving a recording fee.

(c) If a county or municipality elects to use ~~traffic-control signal~~ traffic law compliance monitoring devices, no portion of any civil monetary penalty collected through the use of such devices may be paid to the manufacturer or vendor of the ~~traffic-control signal~~ traffic law compliance monitoring devices. The compensation paid by the county or municipality for such devices shall be based on the value of such equipment and shall not be based on the number of citations issued or the revenue generated by such devices.

(d)(1) A ~~traffic-control signal~~ traffic law compliance monitoring device shall not be used by a law enforcement agency unless the law enforcement agency employs at least one full-time certified peace officer.

(2) Failure of a law enforcement agency to continue to meet the standards provided by this subsection shall cause such agency to be ineligible to use ~~traffic-control signal~~ traffic law compliance monitoring devices.

1 (e) A ~~traffic-control signal~~ traffic law compliance monitoring device shall not be used to
2 produce any photograph, microphotograph, electronic image, or videotape showing the
3 identity of any person in a motor vehicle.

4 40-14-22.

5 The timing of any traffic-control signal which is being monitored by a ~~traffic-control signal~~
6 traffic law compliance monitoring device shall conform to regulations promulgated by the
7 Department of Transportation pursuant to Code Section 32-6-50. Each county or municipal
8 law enforcement agency using a ~~traffic-control signal~~ traffic law compliance monitoring
9 device shall at its own expense test the device for accuracy at regular intervals and record
10 and maintain the results of each test. Such test results shall be public records subject to
11 inspection as provided by Article 4 of Chapter 18 of Title 50. Each such test shall be made
12 in accordance with the manufacturer's recommended procedure. Any such device not
13 meeting the manufacturer's minimum accuracy requirements shall be removed from service
14 and thereafter shall not be used by the county or municipal law enforcement agency until
15 it has been serviced and calibrated at the expense of the law enforcement agency by a
16 qualified technician.

17 40-14-23.

18 Each county or municipality using ~~traffic-control signal~~ traffic law compliance monitoring
19 devices shall erect signs on every highway which comprises a part of the state highway
20 system at that point on the highway which intersects the jurisdictional limits of the county
21 or municipality. A sign shall be erected also by such entity on each public road on the
22 approach to the next traffic-control signal or school speed zone for such road when a
23 ~~traffic-control signal~~ traffic law compliance monitoring device is monitoring such next
24 signal or school speed zone for such road. Such signs shall be at least 30 inches by 30
25 inches in measurement and shall warn approaching motorists that ~~traffic-control signal~~
26 traffic law compliance monitoring devices are being employed.

27 40-14-24.

28 Each county or municipality using any ~~traffic-control signal~~ traffic law compliance
29 monitoring device shall submit not later than February 1 of each year a report on such use
30 during the preceding calendar year to the Governor, the Lieutenant Governor, and the
31 Speaker of the House of Representatives. Such report shall include, without limitation:

- 32 (1) A description of the locations where ~~traffic-control signal~~ traffic law compliance
33 monitoring devices were used;

- 1 (2) The number of violations recorded at each location and in the aggregate on a monthly
2 basis;
- 3 (3) The total number of citations issued;
- 4 (4) The number of civil monetary penalties and total amount of such penalties paid after
5 citation without contest;
- 6 (5) The number of violations adjudicated and results of such adjudications, including a
7 breakdown of dispositions made;
- 8 (6) The total amount of civil monetary penalties paid; and
- 9 (7) The quality of the adjudication process and its results."

10 **SECTION 5.**

11 This Act shall not apply to any offense committed before July 1, 2005. Any such offense
12 shall be punishable as provided by the statute in effect at the time the offense was committed.

13 **SECTION 6.**

14 This Act shall become effective on July 1, 2005.

15 **SECTION 7.**

16 All laws and parts of laws in conflict with this Act are repealed.